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MAILED
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OFFICE OF PETITIONS

In re Patent of Starkston et al. : DECISION ON REQUEST
Patent No. 7,772,090 : FOR RECONSIDERATION OF
Issue Date: August 10, 2010 : PATENT TERM ADJUSTMEN
Application No. 10/674,960 : and
Filed: September 30, 2003 : NOTICE OF INTENT TO ISSUE
Attorney Docket No. 884.949US1 : CERTIFICATE OF CORRECTION

This is a decision on the renewed petition under 37 C.F.R. 1.705(d), filed April 20, 2011. Patentees request that the patent term adjustment indicated in the patent be corrected to one thousand six hundred sixteen (1616) days.

The petition is **granted**.

On August 10, 2010, the above-identified application matured into U.S. Patent No. 7,772,090. A timely request for reconsideration of the PTA, filed October 12, 2010, was granted in part on March 28, 2011. Patentees were afforded a one month/30 day period from the mailing date of the decision to file a renewed petition. The present renewed petition was timely filed on April 20, 2011.

Patentees dispute the length of reduction assessed in connection with the filing of a Rule 312 amendment on June 21, 2010. It is undisputed that a Rule 312 amendment was filed after the mailing of the Notice of Allowance. This was properly a basis for reduction of PTA pursuant to § 1.704(c)(10).

37 CFR § 1.704(c)(10) provides that:

Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

(i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending

on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper;

or

(ii) Four months

Applicants filed a Rule 312 amendment on June 21, 2010. The Office mailed a Response to the Rule 312 Communication on July 13, 2010. Patentees are correct that the period of reduction of 51 days is not warranted. Under the circumstances, the period of reduction is properly calculated as twenty-three (23) days, counting the number of days in the period beginning on the date the Rule 312 amendment was filed, June 21, 2010, and ending on July 13, 2010, the date the Office mailed a Response to Rule 312 Communication. Accordingly, the 51 day reduction is being removed and a 23 day reduction is being entered in connection with the filing of the Rule 312 amendment on June 21, 2010.

In light thereof, the correct patent term adjustment is one thousand six hundred sixteen (1616) days, which is 301 (267 + 34) days of delay under 35 U.S.C. 154(b)(1)(A) + 284 days of delay under 35 U.S.C. 154(b)(1)(B) + 1092 days successful appeal period under 37 CFR 1.702(e) minus 61 days of Applicant Delay.

The Office acknowledges previous submission of the \$200.00 fee set forth in 37 CFR 1.18(e) on October 12, 2010. No additional fees are required.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand six hundred sixteen (1616) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3230.



Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,772,090 B2

DATED : August 10, 2010

DRAFT

INVENTOR(S) : Starkston et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 1588 days

Delete the phrase “by 1588 days” and insert – by 1616 days--